

unique to the individual, that is issued to the individual by a common carrier and enables the individual to be charged by means of a phone bill for charges incurred independent of where the call originates. For purposes of these rules, calling cards must have the following characteristics:

(1) The calling card may consist of a line based number, and that number may be used to generate a bill to the phone number of the individual to which the card is issued;

(2) The calling card does not operate to assess charges through automatic number identification, provided, however, that the carrier may rely on automatic number identification to verify information prior to issuance of the calling card, or for other fraud control mechanisms related to the use or issuance of the calling card;

(3) The caller must actually enter the calling card number to initiate charging to that number, and that the line number associated with the card may be used for billing;

(4) The calling card issuer performs one of the following:

(a) assumes the risk of non-payment through the first billing cycle on the calling card; or

(b) calls the caller back, after performing all appropriate credit and line based checks, to issue a unique card number to the caller, which number consists of a line based or other number and an additional code or identifier which prevents other persons from using the card without disclosure by the caller.

D. Billing Information Related to Credit, Debit and Calling Cards

Add to Section 64.1510 new subsections (f) and (g), to read as follows:

(f) If a consumer elects, pursuant to Section 64.1504(c)(1)(vi) to pay by means of credit, debit or calling card, and the charge for the call or information service appear on the consumer's phone

bill, the phone bill shall clearly display the following:

(i) To the extent technically feasible, information about the service billed in a manner most likely to promote consumer understanding of the service billed;

(ii) The "from" number associated with the service, or other number which will aid in consumer understanding of the service or permit the consumer to call for information related to the service; and

(iii) Shall be posted and in a location separate from local and long distance phone charges.

(g) Carriers providing billing and collection services must provide billing and collection on a content neutral, service neutral and non-discriminatory basis for services presented in compliance with this rule.

E. Compliance with Federal Requirements, and Impact on Inconsistent State Laws Which Interfere with Interstate Commerce

Add a new Section 64.1516, to read as follows:

64.1516 All state laws which are inconsistent with the calling card issuance or presubscription rules published herein, to the extent that they may apply to calls which originate in one state but must transit to another state for number or card issuance, processing or completion, or which result in bills for the information services being mailed, shall be preempted by these rules.

F. Specifics of Written Contractual Agreements

Delete the language contained in Appendix B for Section 64.1501(b)(1); remove the "and" at the end of subsection (b)(1)(iii) and the "or" at the end of subsection (b)(1)(iv); add a new subsection (b)(1) and add new subsections (b)(1)(v) and (vi), as follows:

(1) A written agreement or notice, including one transmitted through an electronic medium, from an information service provider to the consumer, for the sole purpose of arranging for the purchase of information services, in which

(v) The service provider agrees that the agreement or notice, while binding upon the consumer, is not sufficient to require the consumer to pay any charges which may appear on the consumer's telephone bill until the first charges are paid on the account, which event shall be sufficient demonstration of the legal competence of the individual, and acceptance of all of the terms and conditions in the agreement or notice; and

(vi) If in a print format, the agreement and notice shall be of at least the same typeface as the typeface used for the promotion or inducement, and if in an aural format, the same decibel level and delivery speed as the promotion or inducement, and shall be easily severable from any promotions or inducements; or

G. Definition of Information Service

Add to Section 64.1501 a new subsection (c), to read as follows:

(c) Information services shall mean all services

(1) which provide information or entertainment after the initiation of charging for the call or the information or entertainment provided,

(2) including all enhanced services as that term is defined elsewhere in these rules,

(3) but shall exclude any service in which information is provided free of charge and is for the purpose of assisting in completion of the call or using the service provided.

H. Definition of Simultaneous Voice Conversation Services

Add to Section 64.1501 a new subsection (d), to read as follows:

(d) Simultaneous voice conversation services shall mean any service

(1) which permits more than two live people to interact with each other for any conversation,

exchange of ideas, information or entertainment,

(2) where one or more of the parties has a direct or indirect financial relationship with either one of the carriers providing access to the service, one of the information service providers providing the service, or any advertising, promotion or marketing agency or person with a direct or indirect relationship with the carrier or service provider, however

(3) All communications services in which no participant has the direct or indirect financial relationship noted herein shall not be deemed to be a simultaneous voice conversation service or information service, but shall be deemed to be a common carrier teleconference service which is outside the scope or restrictions of these rules.

#### X. CONCLUSION

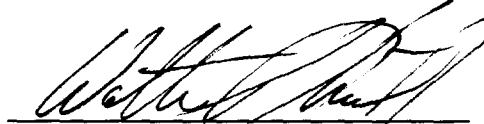
In conclusion, Pilgrim respectfully requests that the Commission reject the rules as proposed in the NPRM, and adopt rules that recognize the language of the statute and the intent of Congress. In order to do this successfully, the Commission will need to abandon its earlier, and admittedly unsuccessful, efforts and rule structure, and adopt new rules which recognize and effectuate the new regulatory scheme carefully crafted by Congress. The Commission should avoid expanding the reach of these rules into dialing patterns which were not the subject of Congressional action, such as those which are not toll free.

The Commission should also adopt rules that recognize the legitimate offerings of common carriers and others, and maintain a level playing field in this highly competitive industry. The LECs have a significant advantage in the provision of enhanced and information services as they have monopoly

control over universal billing and collection and sole control over billed name and address. In addition, thorough their control of the local exchange network, the LECs have a natural advantage over the development and offering of services not available to their competitors. The Commission should not adopt rules which exacerbate this advantage, but attempt to create a level playing field.

A number of problems with the provision of 900 blocking information and the provision of billing and collection by the LECs have as great an impact on problems commonly attributed to the information service industry as those traditionally stated by the Commission and detractors of the industry. Only by addressing some of these real functional problems can the Commission achieve real reform. Pilgrim has proposed rule changes which it believes better reflects the language in the statute and the intent of Congress.

Respectfully Submitted:



Walter Steimel, Jr.  
Fish & Richardson P.C.  
601 13th Street, N.W.  
Fifth Floor North  
Washington, D.C. 20005  
(202) 783-5070 (telephone)  
(202) 783-2331 (facsimile)

Dated: August 26, 1996

Attorneys for  
Pilgrim Telephone, Inc.



## PRODUCTS AND SALES

§ 325F.70

Note 1

defined in United States Code, title 18, section 20, or an affiliate or subsidiary of a financial institution.

Laws 1994, c. 449, § 2.

### 325F.70. Remedies

**Subdivision 1. Injunction.** The attorney general or any county attorney may institute a civil action in the name of the state in the district court for an injunction prohibiting any violation of sections 325F.68 to 325F.70. The court, upon proper proof that defendant has engaged in a practice made enjoined by section 325F.69, may enjoin the future commission of such practice. It shall be no defense to such an action that the state may have adequate remedies at law.

**Subd. 2. Service of process.** Service of process shall be as in any other civil suit, except that where a defendant in such action is a natural person or firm residing outside the state, or is a foreign corporation, service of process may also be made by personal service outside the state, or in the manner provided by section 303.13, subdivision 1(3), or in such manner as the court may direct. Process is valid if it satisfies the requirements of due process of law, whether or not defendant is doing business in Minnesota regularly or habitually.

#### Historical and Statutory Notes

##### Derivation:

St.1978, § 325.80.  
Laws 1967, c. 302, § 2.  
Laws 1963, c. 842, § 3.

The 1967 amendment substituted the "attorney general" for the "commissioner of business development" in subd. 1.

#### Cross References

Access to consumer reports, see § 13C.04.  
Attorney general, duties relating to consumer protection, see § 8.32.  
Consumer remedies, see § 8.31.  
Foreign Corporations, service of process, see § 303.13.  
Service of process, see Rules Civ.Proc., Rule 4.01 et seq.

#### Law Review Commentaries

Consumer protection in the attorney general's office. Robert W. Herr, 1972, 40 Hennepin Lawyer 6.  
Statutory fee-shifting: New opportunities to enhance client results. Arlo H. Vande Vegr, 15 Minn.T.Law. 3 (Fall 1990).

#### Library References

Injunction ¶49(5).  
WESTLAW Topic No. 212.  
C.J.S. Injunctions §§ 133 to 135.

#### Notes of Decisions

Damages 2  
Injunction 1  
Review 3

##### 1. Injunction

State failed to demonstrate that uncrowding prejudgment funds of loan brokers under temporary injunction was necessary to prevent ir-

NOT LEGALLY RESPONSIBLE FOR INFORMATION SERVICE CHARGES INCURRED BY OTHERS WITHOUT YOUR CONSENT EXCEPT FOR CALLS MADE BY YOUR SPOUSE. NEITHER A LONG DISTANCE COMPANY NOR YOUR LOCAL TELEPHONE COMPANY MAY DISCONNECT YOUR SERVICE BECAUSE YOU REFUSE TO PAY AN INFORMATION SERVICE CHARGE."

The notice required by this paragraph can be provided in conjunction with other required notices.

**Subd. 4. Fraudulent misrepresentation.** It is fraudulent misrepresentation under section 325F.69 for an information service provider or a provider's agent, including an agent or employee of an entity that provides billing services for an information service provider, to knowingly advise an information service customer or a telephone service subscriber, either orally or in writing, that:

- (1) information service charges not incurred or authorized by a telephone service subscriber are the responsibility of the subscriber;
- (2) parents or guardians of minors or other vulnerable people are responsible for information service charges incurred by the minors or other vulnerable persons; or
- (3) the availability of telephone service for the subscriber may be affected by failure to pay information service charges not incurred or authorized by the subscriber.

**Subd. 5. Allocation of payment of telephone bills.** The telephone service subscriber shall have the right to direct partial payments of a telephone bill. Unless otherwise directed by the telephone service subscriber, a telephone company or other billing entity that receives partial payment of a telephone bill shall allocate the partial payment first to charges for telephone services, and last to charges for information services.

**Subd. 6. Indemnity.** A telephone company or independent telephone company has a right of indemnity against anyone who has provided it with false information as to the status of information charges.

**Subd. 7. Involuntary blocking.** Anyone who has refused to pay for two months of information charge bills or one month of charges in excess of \$500 may be blocked from access to information services.

**Subd. 8. Exception.** This section does not apply to information services provided via the international telephone network if the charge for the information service call is based on tariff rates and does not apply to traditional long-distance telephone calls.

**Subd. 9. Caller responsibility.** This section does not affect the legal responsibility of the person who places an information service call for the charges for the call.

**Subd. 10. Caller codes regulated.** Information service providers or their agents and telephone companies shall not issue calling card identification codes or personal identification numbers (PIN codes) to consumers over the telephone. This subdivision does not apply to the issuance of identification codes or personal identification numbers to consumers by a financial institution as





While the first two of those provisions remain in the bill, the critical VIII(c) antitrust entry test is gone and the term of years prior to entry was cut in half to 3 years.

So, Madam President, while S. 652 requires the RBOC's meet a checklist of requirements designed to establish conditions necessary for competition in the local exchange, it does not require actual competition to exist. An VIII(c) antitrust test is no longer available. Competition in the local telephone exchange is the next best assurance of a level playing field.

So, Madam President, the goal of this amendment is to make sure that these small companies out there, indeed, have some period of time to ensure that there is a level playing field before the Bells can enter the alarm and service industry.

This period, has been agreed upon for 4 years, and I am hopeful that would be the minimum length of time that we would have. I still believe that the initial agreement of 6 years should have been adhered to, but I understand that this has been worked out for 4 years here in the Senate, with the assurance of the committee that this would be acceptable. I am hopeful that a longer period can be worked out in the conference committee. Again, I want to thank Senators PRESSLER and HOLLINGS for helping work out this agreement.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. PRESSLER. Madam President, these carveouts are always difficult because when there is a carveout, there are problems for new entrants. I agree with the Senator from Iowa that this is small business. There has been a lot of discussion on this, whether the burglar alarm people should be given a certain period of protection.

We hope in a deregulatory bill to get everybody competing as soon as possible. In fact, we had a big thing—at least it was big to me—in the Commerce Committee of keeping even the newspaper publishers without a carveout, without a period of years—they have 5 or 6 years in the House bill.

If we are going to have deregulation, we have to get people competing, because new people want to get into the field also out there, new small businesses.

As I understand it, there is an informal agreement, if we can use that term, reached that they will not seek beyond 4 years in conference, hopefully. With that understanding, we can accept this amendment.

I urge adoption of the amendment.

The PRESIDING OFFICER. Does the Senator have any further debate on this amendment?

Mr. HARKIN. No.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 1323), as modified, was agreed to.

Mr. PRESSLER. Madam President, I move to reconsider the vote by which the amendment was agreed to, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HARKIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa.

#### AMENDMENT NO. 1322

(Purpose: To prevent unfair billing practices for information or services provided over calls to 800 numbers)

Mr. HARKIN. Madam President, if my friend from Massachusetts will yield, I just have two other amendments that have been accepted. I call up amendment No. 1322 and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Iowa (Mr. HARKIN) proposes an amendment numbered 1322.

Mr. HARKIN. Madam President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 146, below line 14, add the following:

#### SEC. 409. PREVENTION OF UNFAIR BILLING PRACTICES FOR INFORMATION OR SERVICES PROVIDED OVER TOLL-FREE TELEPHONE CALLS.

(a) FINDINGS.—Congress makes the following findings:

(1) Reforms required by the Telephone Disclosure and Dispute Resolution Act of 1992 have improved the reputation of the pay-per-call industry and resulted in regulations that have reduced the incidence of misleading practices that are harmful to the public interest.

(2) Among the successful reforms is a restriction on charges being assessed for calls to 800 telephone numbers or other telephone numbers advertised or widely understood to be toll free.

(3) Nevertheless, certain interstate pay-per-call businesses are taking advantage of an exception in the restriction on charging for information conveyed during a call to a "toll-free" number to continue to engage in misleading practices. These practices are not in compliance with the intent of Congress in passing the Telephone Disclosure and Dispute Resolution Act.

(4) It is necessary for Congress to clarify that its intent is that charges for information provided during a call to an 800 number or other number widely advertised and understood to be toll free shall not be assessed to the calling party unless the calling party agrees to be billed according to the terms of a written subscription agreement or by other appropriate means.

(b) PREVENTION OF UNFAIR BILLING PRACTICES.—

(1) IN GENERAL.—Section 228(c) (47 U.S.C. 228(c)) is amended—

(A) by striking out subparagraph (C) of paragraph (7) and inserting in lieu thereof the following:

"(C) the calling party being charged for information conveyed during the call unless—

"(i) the calling party has a written agreement (including an agreement transmitted through electronic medium) that meets the requirements of paragraph (8); or

"(ii) the calling party is charged for the information in accordance with paragraph (9); or"; and

(B) by adding at the end the following new Paragraphs:

"(8) SUBSCRIPTION AGREEMENTS FOR BILLING FOR INFORMATION PROVIDED VIA TOLL-FREE CALLS.—

"(A) IN GENERAL.—For purposes of paragraph (7)(C), a written subscription does not meet the requirements of this paragraph unless the agreement specifies the material terms and conditions under which the information is offered and includes—

"(i) the rate at which charges are assessed for the information;

"(ii) the information provider's name;

"(iii) the information provider's business address;

"(iv) the information provider's regular business telephone number;

"(v) the information provider's agreement to notify the subscriber of all future changes in the rates charged for the information; and

"(vi) the subscriber's choice of payment method, which may be by direct remit, debit, prepaid account, phone bill or credit or calling card.

"(B) BILLING ARRANGEMENTS.—If a subscriber elects, pursuant to subparagraph (A)(vi), to pay by means of a phone bill—

"(i) the agreement shall clearly explain that charges for the service will appear on the subscriber's phone bill;

"(ii) the phone bill shall include, in prominent type, the following disclaimer:

"Common carriers may not disconnect local or long distance telephone service for failure to pay disputed charges for information services."; and

"(iii) the phone bill shall clearly list the 800 number dialed.

"(C) USE OF PINS TO PREVENT UNAUTHORIZED USE.—A written agreement does not meet the requirements of this paragraph unless it requires the subscriber to use a personal identification number to obtain access to the information provided, and includes instructions on its use.

"(D) EXCEPTIONS.—Notwithstanding paragraph (7)(C), a written agreement that meets the requirements of this paragraph is not required—

"(i) for calls utilizing telecommunications devices for the deaf;

"(ii) for services provided pursuant to a tariff that has been approved or permitted to take effect by the Commission or a State commission; or

"(iii) for any purchase of goods or of services that are not information services.

"(E) TERMINATION OF SERVICE.—On receipt by a common carrier of a complaint by any person that an information provider is in violation of the provisions of this section, a carrier shall—

"(i) promptly investigate the complaint; and

"(ii) if the carrier reasonably determines that the complaint is valid, it may terminate the provision of service to an information provider unless the provider supplies evidence of a written agreement that meets the requirements of this section.

"(F) TREATMENT OF REMEDIES.—The remedies provided in this paragraph are in addition to any other remedies that are available under title V of this Act.

"(9) CHARGES IN ABSENCE OF AGREEMENT.—A calling party is charged for a call in accordance with this paragraph if the provider of the information conveyed during the call—

"(A) clearly states to the calling party the total cost per minute of the information provided during the call and for any other information or service provided by the provider to which the calling party requests connection during the call; and

"(B) receives from the calling party—

"(1) an agreement to accept the charges for any information or services provided by the provider during the call; and

"(11) a credit, calling, or charge card number or verification of a prepaid account to which such charges are to be billed.

"(10) DEFINITION.—As used in paragraphs (8) and (9), the term 'calling card' means an identifying number or code unique to the individual, that is issued to the individual by a common carrier and enables the individual to be charged by means of a phone bill for charges incurred independent of where the call originates."

(2) REGULATIONS.—The Federal Communications Commission shall revise its regulations to comply with the amendment made by paragraph (1) not later than 180 days after the date of the enactment of this Act.

(3) EFFECTIVE DATE.—The amendments made by paragraph (1) shall take effect on the date of the enactment of this Act.

(c) CLARIFICATION OF "PAY-PER-CALL SERVICES" UNDER TELEPHONE DISCLOSURE AND DISPUTE RESOLUTION ACT.—Section 204(1) of the Telephone Disclosure and Dispute Resolution Act (15 U.S.C. 5714(1)) is amended to read as follows:

"(1) The term 'pay-per-call services' has the meaning provided in section 228(j)(1) of the Communications Act of 1934, except that the Commission by rule may, notwithstanding subparagraphs (B) and (C) of such section, extend such definition to other similar services providing audio information or audio entertainment if the Commission determines that such services are susceptible to the unfair and deceptive practices that are prohibited by the rules prescribed pursuant to section 201(a)."

Mr. HARKIN. Madam President, I want to speak about a problem being faced by families across the country—a problem that has cost families hundreds and even thousands of dollars. This problem exposes families to ripoff schemes in their own homes. Worst of all, young people are being exposed to dial-a-porn phone sex services, even when the families take the step of placing a block on extra cost 900 number calls from their home.

Most people believe that when they dial 1-800 at the beginning of a call, they are calling toll free. Toll free 800 number calling has had a dramatically positive impact on many businesses, allowing catalog sales to take off, and providing helpful customer services. My State of Iowa is prominent in providing these telemarketing services. So I strongly believe that we must ensure public confidence in toll-free 800 numbers.

Federal law prohibits most practices that would allow people calling to an 800 number to be charged for the call. Callers cannot be assessed a charge by virtue of completing the call, and they cannot be connected to a pay-per-call service—which are usually called 900 number services. They also cannot charge for information conveyed during the call—with one exception. If there is a preexisting agreement to be charged, a charge is allowed. This provision was added, because there was concern that the provision might be read to prevent people buying merchandise with a credit card on an 800 number, or for nationwide access numbers for long distance providers.

Unfortunately, this small loophole has allowed some sleazy operators to set up phone sex services on 800 numbers—and to make the caller pay the bill. They use the loophole allowing a charge when there is a preexisting arrangement to turn a toll-free 800 number call into a toll call.

Families are being hurt by these services. Youngsters run across the ads, and, thinking the call will be free, call numbers like 1-800 HOT TALK. These numbers appear in all kinds of publications—from the city paper here in Washington; Rolling Stone magazine; and a host of adult magazines.

Here are just two examples of this outrageous behavior that has come to my attention recently. I would bet that every Senator has received calls from constituents about this problem, but here are just two from Iowa.

Madam President, I ask unanimous consent to print some constituent letters in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

CONSUMER ADVOCATE, OFFICE OF  
UTILITIES, LUCAS STATE OFFICE  
BLDG.,

Des Moines, IA January 28, 1995.

To Whom It May Concern:

This letter is regarding my recent encounter with U.S. West Communications.

On Tuesday January 24, 1995 I called U.S. West to change our service. Because of a recent problem with the so called "chat line" and because of past problems with the 1-800's that conveniently turn into the 1-900 charges, I asked U.S. West to take my husband off the account completely and to have all long distance service blocked from our home. I wanted no access to any 1+ dialing, 1-800-1-900 calls. I also cancelled all calling cards. My husband agreed and the calling cards were stopped that same day and everything was switched to only my access.

On Thursday January 26th I thought I had better check to see that my order was completed. I had no 1+ direct dialing but I could still call 1-800 numbers. I was shocked.

On Saturday January 28, 1995 I called U.S. West to see why I still had 1-800 access. They informed me that there was no way to block 1-800 calls. I explained to the lady that I had been misinformed because I was told my husband would not be able to make any long distance calls from our house. She put me on hold then came back to me and said I could not block 1-800 calls. I waited a few hours, thinking about everything I had been told and then I recalled U.S. West and asked to speak to a supervisor. I was told that there were no supervisors around to talk to. The representative offered to help. I explained the situation to her. She read a new department memo on the 1-800 information while I waited to get some answers. I explained to her that I really needed to speak to a supervisor and was told that the supervisor would just do the same thing that she was doing (read the memo on 1-800).

I am discouraged for many reasons: I could not speak to a supervisor and it was not offered.

For a minor to buy alcohol or cigarettes they must show an I.D. They are face to face with the seller. These phone conversations have a recording saying you must be 18 years or older or have parents permission. They have no actual contact with the buyer and in turn are selling to minors, and unfortunately it's the parents who pay.

In closing I would like to urge you to please find a way to stop this problem. I would love to find a way to stop the phone scam operations but I do not know where to begin. I plan to send a copy of this letter to Senators Tom Harkin and Charles Grassley. I can only hope that the more of us who complain the easier it will be to put an end to it all.

Thank you for your time in reading my concerns.

Sincerely,

SHEILA WENGER.

IOWA UTILITIES BOARD,  
UTILITIES DIVISION;  
Des Moines, IA.

DEAR SIRS: My name is Sue Tappe and I work as the Clinton County Protective Payee. I work with clients that receive some type of benefit, such as SS or SSI, VA etc., and cannot handle their own funds for a variety of reasons.

I am writing today in reference to a client that had a phone service installed in Sept. 1994. This service, at the time of order, had a long distance block set up on it, so I assumed there would be no long distance calling. WRONG assumption. My client got a hold of some advertisements that offered 800 numbers, and went to town dialing them. They then turned into 900 numbers by requesting the caller to push another button. He can only read to approximately 3rd grade level, but he can follow instructions. He said 800 numbers do not cost anything when I questioned him on the subject.

I have called all the long distance companies and have asked for credits because of the long distance block. I have gotten cooperation from a couple of the companies, but they also let me know that the normal procedure is to have them then turned over to a collection agency.

What can be done about these pay talk telephone companies who take advantage of clients who cannot understand the consequences of their actions much less the value of their money?

By the way, my client no longer has a phone service, and that, he does understand. But until there is complete credit back, he will never have service again.

I am enclosing copies of bills and sending copies to Senator Tom Harkin and Congressman Jim Leach. We need to take action for a change in laws, and to protect ourselves, all of us, from this situation happening again.

Thank you for listening and hope you might provide some suggestions to me and certainly some action can be taken in this area.

SUE TAPPE, Payee.

Mr. HARKIN. Madam President, here is how the companies do it. A caller calls an 800 number. He or she is directed to enter an "access code," in order to be connected to a service—without knowing that, by entering the number, they are authorizing the service to charge for the call. Another scam is for the call to be switched to international numbers in small countries around the world, or to give an international phone number without disclosing the extremely high international calling rates. Phone sex companies set up in these companies, where local law in the host country allows them to receive a cut from the charges. One service operated out of Suriname charges some \$50 per minute.

Under another so-called preexisting agreement, the first call from a number establishes the agreement, and subsequent calls are charged to the phone number the first call was made from. This means that anyone making a telephone call from your phone could make you liable for hundreds of dollars of calls—even if the person never makes another call from that phone. A person making a call from a motel can set up one of these agreements with a phone-sex service, and the motel could be forced to pay for subsequent calls from anywhere in the country. At the Motel 6 chain alone, porn calls have cost a quarter of a million dollars in the last year. In our own offices here at the Senate, a courier who uses the courtesy telephone, supposedly to call his dispatcher, could charge phone-sex calls back to your office account.

How many people are concerned about this problem? All you need to know is how many families have signed up for 900 number blocking. These families have said that they have no intention of using pay-per-call services. In Iowa, about one in four lines are restricted from calling 900 numbers, most of which are homes, rather than businesses.

Today, I am offering an amendment that would prohibit this abuse. My amendment, which is similar to one that has been included in the House Commerce Committee-passed version of this legislation by our House colleague, Representative BART GORDON of Tennessee, would alleviate this problem. Representative GORDON has been a leader on this issue for many years, and has fought hard to get control of the phone-sex industry. This amendment would clarify that a preexisting agreement must be in writing, which would end the supposed preexisting agreements that are initiated by pressing a button on a phone. It also expands the definition of pay-per-call service to include the international calls, to allow the FCC to regulate them.

Alternatively, it would allow information services on 800 numbers without a preexisting agreement. The service provider would have to disclose their rates on each call. If the caller agreed to pay and gave a credit, charge or calling card to pay for the information, the service could be provided.

The bill as reported by committee purports to address this problem, in section 406. However, this section would not go as far as the language I am offering. My amendment was developed after extensive consultation with industry representatives, to try to take into account problems beyond the 800 numbers, and also to take into account the new legitimate information systems that are going to be offered in the new information environment that this bill will create. Further, a similar amendment has already been accepted in the House subcommittee markup. I urge my colleagues to support this im-

portant amendment to close the loophole on the phone sex peddlers.

Madam President, again, I believe this amendment has been agreed to.

The PRESIDING OFFICER. Is there further debate on this amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 1322) was agreed to.

Mr. PRESSLER. Madam President, I move to reconsider the vote by which the amendment was agreed to, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1324  
(Purpose: To combat telemarketing fraud through reasonable disclosure of certain records for telemarketing investigations)

Mr. HARKIN. Madam President, I call up amendment No. 1324.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Iowa (Mr. HARKIN) proposes an amendment numbered 1324.

Mr. HARKIN. Madam President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 146, below line 14, add the following:

**SEC. 409. DISCLOSURE OF CERTAIN RECORDS FOR INVESTIGATIONS OF TELEMARKETING FRAUD.**

Section 2703(c)(1)(B) of title 18, United States Code, is amended—

(1) by striking out "or" at the end of clause (ii);

(2) by striking out the period at the end of clause (iii) and inserting in lieu thereof "or"; and

(3) by adding at the end the following:

"(iv) submits a formal written request for information relevant to a legitimate law enforcement investigation of the governmental entity for the name, address, and place of business of a subscriber or customer of such provider, which subscriber or customer is engaged in telemarketing (as such term is in section 2325 of this title)."

Mr. HARKIN. Madam President, every year thousands of Americans are victimized by fraudulent telemarketing promotions. And, unfortunately, these scam artists prey most often on our senior citizens. The losses every year are estimated to be in the billions of dollars. I send an amendment to the desk that would help law enforcement to more effectively combat these abuses.

How do these rip-offs occur and why is my amendment necessary to stop them? Advertisements regarding sweepstakes, contests, loans, credit report and other promotions appear in newspapers, magazines, and other direct mail and telephone solicitations. The operators of many of these phoney promotions set up a telephone boiler room in which a number of phones are operated to receive calls responding to their ads and to make direct phone appeals, run their promotion for two to three months, ripping people off for

thousands and even millions of dollars, and then discontinue the operation and move on to another location and rip-off promotion.

By the time law enforcement authorities have received enough information to support obtaining the grand jury subpoenas required under current law, the business and the operators are gone. And the often elderly victims are out of luck. Law enforcement authorities currently do not have a mechanism available to quickly identify the location of the boiler room before the promotion is discontinued. So, they often cannot get after these scam artists until many people have been victimized and the operation has closed down.

Law enforcement agencies have this problem because often these promotions furnish only a phone number, leaving no other means of identification or location. My amendment addresses this shortcoming by providing law enforcement authorities with a narrowly drawn procedure to more quickly obtain the name, address, and physical location of businesses suspected of being involved in telemarketing fraud. Phone companies would have to provide law enforcement officials only the name, address, and physical location of a telemarketing business holding a phone number if the officials submitted a formal written request for this information relevant to a legitimate law enforcement investigation.

The need for this change was brought to my attention by the U.S. Postal Inspection Service, the Federal agency which investigates many of the telemarketing schemes. It is necessary to crack down on serious consumer fraud. With this change, we will have many more successful efforts to shut down these rip-off artists like several recent cases in my home State of Iowa.

Gregory Dean Garrison of Red Oak, IA was recently indicted for operating a telemarketing promotion. He is alleged to have obtained lists of people who had previously been victimized by telemarketing schemes. Using the company named Teletrieve, he offered for a fee, of course, to help individuals recover all the money they previously lost to telemarketers. No money was ever recovered. Most of the victims were in their eighties.

Approximately 30,000 Iowans received solicitations for another scam. Sweepstakes International, Inc., mailed these Iowans and others around the Nation postcards that enticed recipients to call a 900 number in order to receive a "valuable prize." Callers were charged \$9.95 on their phone bill. Based on a Postal Service investigation, civil action was initiated in U.S. District Court in Iowa. As a result of the court action the promotion was halted and \$1.7 million was frozen. This represented just one and a half month's revenue from the scam.

In a similar case, Disc Sweepstakes, Limited of West Des Moines mailed





## ISSUE: TOLL-FREE "800" CALLS

**BACKGROUND:** The general public has long held the perception that calls made by dialing "1+800" are toll-free in nature. Although this has been true historically, the proliferation of sex and chat lines and the controversy over "1+900" dialing has resulted in certain service providers using the 800 dialing prefix for customer-billed calls.

Current law provides an exception to the ban for charging for information conveyed during a call accessed via 800 if the calling party has a pre-existing agreement to be charged for the information or discloses a credit or charge card number during the call. The "pre-existing" agreement is considered to be a loophole allowing a few service providers to establish a pre-existing agreement by issuing an instant PIN number to the caller. Charges are then billed to the caller's phone number.

**WHY IT MATTERS:** By requiring a proposed "written" agreement with a caller, this loophole will be eliminated so that unknowing consumers are protected from incurring charges when calls are placed to an 800 number from their telephones.

## **STATUS:**

**H.R. 1555 and S.652:** The House and Senate versions are similar. Currently the most significant difference between the two is that the House version requires confirmation in the form of a signature of a legally competent subscriber agreeing to the terms of the service agreement prior to the provision of the service. The Senate version requires the service provider to deliver -- either through the mail or electronically -- a terms of service contract alerting the subscriber of the rates and conditions of the service, as well as furnishing a password or pin number. The "signature of a legally competent subscriber" requirement is met when the subscriber authorizes payment of the service -- either by providing a credit card number or issuing a signed check.

**MCI POSITION:** MCI is working with the Senate and sponsors of the bill in the House to resolve the two versions and to ensure that consumers are not misled into thinking that information services to which they subscribe over an 800 number are free of charge. Today, customers ordering products and services over 800 numbers do not have to comply with rigorous confirmation procedures. The proposed requirement that a subscriber provide a "legally competent" written signature to the information service provider before service can be initiated is not practical since customers frequently will not take the time to sign and return written documents. Moreover, a simple signed document provides less proof of legal competence (i.e., a minor easily could forge a signature) than does having a credit card or checking account.

## **TOLL-FREE DIALING PROTECTION**

---

### **The Problem**

The Telephone Disclosure and Dispute Resolution Act (TDDRA) went a long way toward closing down abusive, deceptive pay-per-call services, and to provide disclosure to consumers of charges for services that might appear on their telephone bill. As information services expand, this disclosure will become more important than ever.

However, some service providers, often providing phone-sex services, have gotten around these restrictions, by turning supposedly free 800 number services into pay-per-call services. They do this through "instant credit card numbers," where a caller is issued a credit personal identification number over the phone, with no disclosure of the costs and liabilities associated with it. Often, these numbers are issued to young people, who then unknowingly charge thousands of dollars on their parents' telephone bills, even if that parent has 900 number blocking. Another abuse is that these services are being set up in foreign countries with high international calling charges. Unsuspecting callers dial the international access numbers, without knowing that they may be liable for high charges, some as high as \$50 per minute.

### **The Harkin Amendment**

The Harkin Amendment would tighten up on these abusive practices. It is similar to an amendment included in the House-Commerce Committee passed bill, introduced by Rep. Bart Gordon. It would provide that charges for 800 number calls could only accrue in two instances: if there is a preauthorized agreement, with disclosure of rates, provider information, and payment methods in writing, or if the caller informed of the costs accepts the charges and provides a credit or calling card number to which the charges will be billed.

It would also provide for disclosure that failure to pay disputed charges appearing on a telephone bill pursuant to a preauthorized agreement would not result in telephone service being cut off. Too often, people feel that they have no choice but to pay charges on their telephone bills, because they fear losing their service.

If a common carrier receives a complaint that a service provider is violating the requirements above, the carrier must investigate. If they determine that the provider is not complying, the carrier may terminate the services of that provider.

Finally, the amendment would allow the FCC to expand the definition of "pay-per-call" services under TDDRA to similar services that are susceptible to the same deceptive practices. This would allow regulation of the international numbers, or other variations developed in the future.